



Image

02-17-04

1646
B

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

Approved for use through 09/30/2000. OMB 0651-0031
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

| | | | |
|---|-----------------------------|-------------------------------|------------------|
| TRANSMITTAL FORM (to be used for all correspondence after initial filing) | Application Number | 09/902,736 | |
| | Filing Date | JULY 10, 2001 | |
| | First Named Inventor | AUDREY GODDARD | |
| | Group/Art Unit | 1646 | |
| | Examiner Name | KEMMERER, ELIZABETH | |
| Total Number of Pages in This Submission | 3 | Attorney Docket Number | 39780-1618 P2C45 |

ENCLOSURES (check all that apply)

| | | |
|--|---|---|
| <input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Version With Markings Showing Changes <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 <input type="checkbox"/> Copy of Notice | <input type="checkbox"/> Copy of an Assignment <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b) <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Power of Attorney, by Assignee to Exclusion of Inventor Under 37 C.F.R. §3.71 With Revocation of Prior Powers <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request for Refund | <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Additional Enclosure(s) (please identify below): <input checked="" type="checkbox"/> STAMPED RETURN POSTCARD |
| Remarks AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT 08-1641 FOR ANY FEES DUE IN CONNECTION WITH THIS PAPER, REFERENCING ATTORNEY'S DOCKET NO. 39780-1618 P2C45. | | |

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

| | | |
|--------------------------------|---|---|
| Firm or Individual name | HELLER EHRMAN WHITE & McAUILLIFFE LLP 275 Middlefield Road, Menlo Park, California 94025 | DAPHNE REDDY (Reg. No. 53,507) Telephone: (650) 324-7000 Facsimile: (650) 324-0638 |
| Signature | Daphne Reddy | |
| Date | February 13, 2004 | Customer Number: 35489 |

CERTIFICATE OF EXPRESS MAILING

| | | | |
|--|----------------|-------------|--------------------------|
| I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated below and addressed to: MAIL STOP , Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450, on this date: February 13, 2004 | | | |
| Express Mail Label EL 977 676 684 US | | | |
| Typed or printed name | C. FONG | | |
| Signature | C. Fong | Date | February 13, 2004 |

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop ___, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|--|---|--|
| In re application of: |) | Examiner: Kemmerer, Elizabeth |
| Audrey GODDARD, et al. |) | Art Unit: 1646 |
| Application Serial No. 09/902,736 |) | Attorney's Docket No. 39780-1618 P2C45 |
| Filed: July 10, 2001 |) | Customer No. 35489 |
| For: SECRETED AND TRANSMEMBRANE |) | |
| POLYPEPTIDES AND NUCLEIC |) | |
| ACIDS ENCODING THE SAME |) | |

EXPRESS MAIL LABEL NO. EL 977 676 432 US
Date Mailed: FEBRUARY 13, 2004

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants hereby request reconsideration of the Patent Term Adjustment (PTA) accorded to the above-referenced application. In the Notice of Allowance, the *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* states that the PTA is "115" days. Applicants hereby request reconsideration of the PTA calculation before their payment of the issue fee and enclose a check in the amount of \$200.00 for the PTA adjustment request as set forth in 37 C.F.R. § 1.18(e).

REMARKS

According to the U.S. Patent and Trademark Office (PTO), the total PTA for the above-referenced application based on the Applicants' Delay and PTO Delay, was **115** days. A review of the Patent Term Adjustment (PTA) in the PAIR/PALM system shows that the U.S. Patent and Trademark Office (PTO) calculated the Patent Term Adjustment as follows:

A *Non-Final Office Action* was mailed on February 25, 2003 regarding the rejection of the submission of Claims 39-44. Applicants sent a timely response to the *Office Action* by

Express mail on May 27, 2003 since May 25, 2003 was a Sunday and further, May 26, 2003 was a PTO Observed Holiday (Memorial Day). The returned date-stamped postcard indicates that the response was received by the PTO on May 27, 2003, and the records in the PAIR/PALM system reflects the entry of "Response after Non-Final Action as received on May 27, 2003. The PAIR/PALM system calculates an Applicants Delay of two days which Applicants are in disagreement with. Also submitted with the *Office Action* response was an Amendment and Response to Office Action, a Supplemental Information Disclosure Statement, and a Supplemental PTO Form 1449 with one (1) cited reference. Based on a request by the Examiner, Applicants re-sent, via facsimile on September 29, 2003, the above documents to the PTO. However, the PAIR/PALM system reflects the entry of "Information Disclosure Statement (IDS) Filed" as received on September 29, 2003 even though it was originally submitted and documented as received on May 27, 2003. The records in the PAIR/PALM system reflect that the APPL Delay clock started on May 27, 2003 and stopped on September 29, 2003 with the "Information Disclosure Statement (IDS) Filed." However, Applicants believe that the Supplemental Information Disclosure Statement filed on May 27, 2003 should have been sufficient to stop the APPL Delay clock. Thus, Applicants are in disagreement with the calculation of the APPL Delay of 125 days (from May 27, 2003 to September 29, 2003) and believe that the correct APPL Delay is 0 days.

Therefore, Applicants respectfully submit that, instead, this application is entitled to a total PTA of **242** days (the PTO Delay of 242 days minus the Applicants' Delay of 0 days) and request adjustment accordingly. Applicants also submit that the above-referenced application is not subject to a terminal disclaimer.

Any additional fees that may be due in connection with this application may be charged to Deposit Account No. **08-1641** (Attorney's Docket No. **39780-1618 P2C45**). Should there be any questions, please contact the undersigned at the correspondence address listed below.

Respectfully submitted,

Date: February 13, 2004

By: Daphne Reddy
Daphne Reddy (Reg. No. 53,507)

HELLER, EHRMAN, WHITE & McAULIFFE LLP
275 Middlefield Road
Menlo Park, California 94025-3506
Telephone: (650) 324-7000
Facsimile: (650) 324-0638